

H.Judiciary@house.ks.gov

SB 70

Nuetral

Webex

Hearing: Wednesday, March 12, 2025, 3:30 PM

missy.leavitt@protonmail.com

Dear Madam Chair and Committee Members,

I am a citizen of Kansas, and I am an election integrity advocate and researcher. Today I submit my testimony to you all as neutral in hopes that we can get some final additions to this bill to make it a bit better. I believe the substance of this bill is very important and I want to share my personal testimony on the pieces of this I appreciate and what I think could make it better.

Firstly, I have attached to my testimony a KORA request fee schedule in which I submitted to my county clerk for public records relating to the August 2024 primary election. On August 9th, 2024, I submitted and on Sept. 6, 2024, I was provided with this response as the estimated fee schedule for a total of \$4,537.70. I was forced to KORA request the tabulator tapes in electronic form for a few reasons – 1. The election clerk would not let me view the tabulator tapes in person at the closing of the polls (of which I was a poll agent and a candidate), - and 2. they had me kicked out of the election center at 7:00 pm unlawfully.

After I left the polling center, I immediately filed a complaint with the County Sheriff for the violation of my statutory privileges, and an investigation was opened. Local law enforcement does not understand that they are the authority of the law even regarding elections, they assume that the Secretary of State or someone at a state agency is supposed to handle these issues. In short, there was an investigation, there is indeed video of the interviews from the officer's body camera, which I KORA requested and was never provided any reason nor correspondence why I could not obtain that information. I did

inquire with the County Attorney about what the status was and requested information on whether the case was no longer under investigation or what the outcome was. I never received any information and was never provided the opportunity to defend my statutory privileges.

Section 1. (a) page 1 line 16 of this bill almost completely removes public access to any information related to elections. Texas Congressman Pete Sessions has recently submitted a bill regarding elections to ban election machines and require video recordings of the hand counting, and under this section as I understand it, these recording would not be considered public.

In Section 1. (c)(6) page 2 line 25 – I would just like to thank you all for this amendment! I personally appreciate the opportunity to be able to request copies of voter rolls for my county once this passes without sacrificing a bunch of money when digital copies are fast and easy to send.

In Section 2. of the bill, you can see that my attached letter is littered with this statute and many of these items seem like a very clear overreaching interpretation considering election related KORA requests. I do not have a bar license, but they use several means by which they can consider denial of election records. In addition, under Section 2. (11)(C) page 4 line 38 of the bill I cannot support, as someone who has experienced direct violations of my statutory privileges and filed a complaint, I should at the very least have access as the filing party to obtain law enforcement records of the investigation. I should not have to file a court case, get a lawyer, just to try and get to the discovery phase of a trial to obtain the records for a matter that directly impacts me and my personal harm. Kansas is a one party state regarding recordings, and I do believe that as long as the video interviews and police reports do not violate the identity of an undercover agent, we should find a better way to handle this particular piece of the bill.

To be quite honest, the biggest issue with public confidence in our elections is the issue of transparency. We have been begging for it for over 4 years now, and I would like to request that at the very least we go ahead and add another section that simply makes all county election records public.

Quite frankly it's already stated as such in the Secretary of State's Election Standards under Chapter II – Page 75 & 76.

XII. ELECTION RECORDS AND THE KANSAS OPEN RECORDS ACT

All election records produced and maintained by the CEO are presumed to be open under the Kansas Open Records Act (KORA) [KSA 45-215, et seq] unless they are specifically closed by a federal or state statute or falls under one of the exceptions to KORA. [KSA 45-216]. Consult with your county counselor regarding KORA requests.

A. The basic KORA Process:

- Request must be in writing (no specific form) – so no debate on what was requested
- A response is due within 3 business days. [KSA 25-218] The day the request is received is day zero. The response should acknowledge the request and provide an estimate of when the records will be produced and the cost. State whether the request seeks exempted or non-public records, which will not be produced.
- You can require payment of all actual costs before producing the requested records
- Clarify what the requestor is seeking- some requestors use “cut & paste” requests without understanding what they are requesting.
- Election Work takes priority- explain that in a response or follow-up. Do not produce records if it interferes with completion of the official duties for which the records are needed. When a request is received,

B. What Must be Produced:

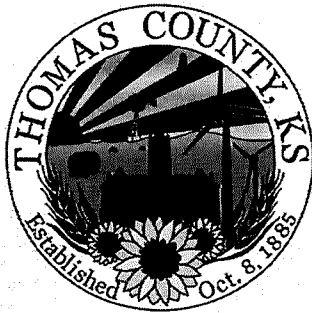
I have seen many attempts at increasing voter confidence, and to be clear I believe that the intention of the KORA law is so that the public can have an oversight of their government functions providing a path for accountability. However, I hear people giving testimony all the time and my experience for my own personal research has been nothing short of difficult.

In closing I would like to again thank you for the piece of this bill removing the fees for digital copies per page. However, I cannot support the limitation to video or other records regarding investigations, because it is simply too broad. If the purpose of this bill is to protect certain people or

types of investigations, please specify those in here. Whether it be domestic violence cases, undercover operations, or situations involving minor children. I believe this bill has the potential to be a lot better and really serve the needs of the public if we adjust a few more items before it passes.

Thank you for your time and attention to this matter.

Missy Leavitt



September 6, 2024

Melissa "Missy" Leavitt
535 W 8th Street
Colby, KS 67701

RE: Thomas County Open Records Request for Tabulator Tapes, Abstracts, Testing Results, and Audit Logs for the 2024 Primary Election.

Dear Melissa "Missy" Leavitt:

We have reviewed your written record request after our prior initial response. As we understand your request, you are seeking "tabulator tapes," "abstracts," "logic and accuracy testing results," "test decks," as well as "post audit information." Many items in your request are ambiguous; however, we have endeavored to comply with your request as we understand it. This communication is to provide you with additional information concerning the status of your requests, in accordance with K.S.A. § 45-218(d).

While there may be public information that falls under your requests, some of the information under your requests is not open to the public. The following exceptions in the Kansas Open Records Act ("KORA") apply to your request:

K.S.A. § 45-221(a)(1) excludes information which may not be released under federal law. Under 42 U.S.C. § 5195c(e),¹ election systems constitute "Critical Infrastructure." Accordingly, some of the information requested may contain "Critical Infrastructure Information" as defined by 6 U.S.C.A. § 650(f). Accordingly, federal law likely prohibits the disclosure of information requested pursuant to 6 U.S.C.A. § 673(a)(1)(E).

K.S.A. § 45-221(a)(2) excludes records which are privileged under the Rules of Evidence. Specifically, the Political Vote Privilege under K.S.A. § 60-431 and the Trade Secret Privilege under K.S.A. § 60-432 may apply here and we do not have the consent of the applicable privilege holders.

K.S.A. § 45-221(a)(12) excludes records of emergency or security information or procedures of a public agency, if disclosure would jeopardize public safety, including records of cybersecurity plans, cybersecurity assessments and cybersecurity vulnerabilities or procedures related to

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Noxious Weed Director
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785-460-4585
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Josh Faber, Maintenance Director
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¹ See also Cybersecurity and Infrastructure Security Agency guidance on Election Security available at <https://www.cisa.gov/topics/election-security> (last accessed August 8, 2023).

cybersecurity plans, cybersecurity assessments and cybersecurity vulnerabilities, or plans, drawings, specifications or related information for any building or facility that is used for purposes requiring security measures in or around the building or facility or that is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility. Some of the information you requested may be excluded by this provision of KORA.

K.S.A. § 45-221(a)(30) excludes records containing information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of privacy. K.S.A. § 45-217(d) defines "clearly unwarranted invasion of personal privacy" as revealing information that would be highly offensive to a reasonable person. In this particular case, information requested could be used to determine individuals' specific ballot information which would be an invasion of privacy and the Political Vote Privilege under K.S.A. § 60-431. In addition, this information is made unavailable to the public under K.A.R. 7-29-3. We are committed to protecting the privacy of every Kansans' vote and will not allow that privacy to be violated by outside organizations and groups.

Your request may also include reports which have never been previously generated by our office and are, therefore, not responsive to your request. Based on guidance from the Kansas Attorney General's Office, an agency does "not need to create records in order to fulfill a request." See Kansas Attorney General's Office, "A Guide to Open Meetings and Open Records" at 9.² Production of any reports pursuant to your requests shall not be construed as consenting to create new records now or in the future.

Given your requests, we will expend staff time to locate and produce the requested information that is not exempt under KORA. We estimate that processing your requests will cost \$4,537.70.

Please make a check out to Thomas County at 300 North Court Ave., Colby, KS 67701. Please write "KORA Request" in the memo line. This fee must be paid in advance and does not guarantee that any information is necessarily responsive or will ultimately be produced; however, it is our policy to issue you a refund if actual processing costs are below this estimated amount. Alternatively, if the actual costs exceed this amount, we will contact you for additional payment before fully processing your request. After receiving payment, we expect that we can process your request accordingly within 30 days of receiving clear and full payment. Pursuant to K.S.A. 45-220(b), we also ask that

² Available at https://ag.ks.gov/docs/default-source/publications/koma-kora-training-slides.pdf?sfvrsn=343d6e58_28 (last accessed August 8, 2023).

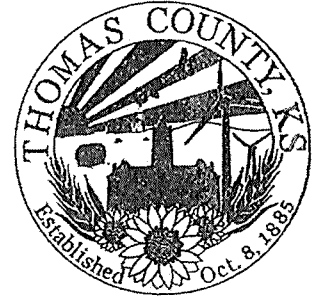
you provide your address and proof of identity before we process your request. We look forward to working with you on these requests.

Please feel free to contact our office with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Keesa Mariman".

Keesa Mariman
Thomas County Clerk/Election Officer



Kora Request	Transmitted Electronic Copy Fees	Search Fee / Clerical Time (\$30 Per Hour)	Notes
Tabulator Tapes:			Each Results Tape is 170 Pages @ .15/page. Each Zero Tape is 42 pages @ .15/page.
Early Voting	\$ 25.50	\$ 75.00	2.5 Hours - Redaction/Scanning
Early Voting Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Advanced	\$ 25.50	\$ 75.00	2.5 Hours - Redaction/Scanning
Advance Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Election Day	\$ 25.50	\$ 75.00	2.5 Hours - Redaction/Scanning
Election Day Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Late Mail 1			Denied per K.S.A. § 45-221(a)(30), K.S.A. § 45-217(d), K.S.A. § 60-431, K.A.R. 7-29-3
Late Mail 1 Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Late Mail 3			Denied per K.S.A. § 45-221(a)(30), K.S.A. § 45-217(d), K.S.A. § 60-431, K.A.R. 7-29-3
Late Mail 3 Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Provisional			Denied per K.S.A. § 45-221(a)(30), K.S.A. § 45-217(d), K.S.A. § 60-431, K.A.R. 7-29-3
Provisional Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Testing			
Test Ballots:	\$ 23.25	\$ 156.00	155 L&A Test Ballots x .15 each. Redaction/Scanning
ICX Ballots:	\$ 5.55	\$ 30.00	37 x .15. Redaction/Scanning
EMS Testing:	\$ 14.70	\$ 7.50	98 x .15.
Test Deck Charts	\$ 5.40	\$ 7.50	36 x .15.
Test Tabulator Test Tape	\$ 127.50	\$ 375.00	5 Test Rolls for In-Office L&A Testing: Advance, Early, Late Mail, Election Day 1, Election Day 2. Redaction/Scanning
Zero Tapes	\$ 31.75	\$ 300.00	5 Test Rolls for In-Office L&A Testing: Advance, Early, Late Mail, Election Day 1, Election Day 2. Redaction/Scanning
Public Test Ballots	\$ 5.10	\$ 30.00	34 Ballots/Test Deck Charts. Redaction/Scanning
EMS Testing Public:	\$ 3.00	\$ 7.50	20 pages x .15
Public Test Results Tape	\$ 25.50	\$ 75.00	2.5 Hours - Redaction/Scanning
Public Test Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Post Election Test Results Tape	\$ 25.50	\$ 75.00	2.5 Hours - Redaction/Scanning
Post Election Zero Tape	\$ 6.35	\$ 60.00	2 Hours - Redaction/Scanning
Audit			
Tally Sheets	\$ 0.60	\$ 7.50	4 x .15
Post Election Audit Report	\$ 0.90	\$ 7.50	6 x .15
EMS Results			
Early Voting	\$ 3.30	\$ 30.00	22 pages x .15 Report including Hand-Count (if any). Redaction/Scanning
Advanced	\$ 3.30	\$ 30.00	22 pages x .15. Report including Hand-Count (if any). Redaction/Scanning
Election Day	\$ 3.30	\$ 30.00	22 pages x .15. Including Hand-Count (if any). Redaction/Scanning
Late Mail 1			Denied per K.S.A. § 45-221(a)(30), K.S.A. § 45-217(d), K.S.A. § 60-431, K.A.R. 7-29-3
Late Mail 3			Denied per K.S.A. § 45-221(a)(30), K.S.A. § 45-217(d), K.S.A. § 60-431, K.A.R. 7-29-3
Provisional			Denied per K.S.A. § 45-221(a)(30), K.S.A. § 45-217(d), K.S.A. § 60-431, K.A.R. 7-29-3
8/7/24 Updated Results Report w/o Write-In	\$ 3.60	\$ 7.50	24 x .15
8/7/24 Updated Results Report w/Write-Ins	\$ 7.05	\$ 7.50	47 x .15
8/9/24 Updated Results Report w/Write-In	\$ 3.60	\$ 7.50	24 x .15
8/9/24 Updated Results Report w/Write-Ins	\$ 7.05	\$ 7.50	47 x .15
Official Total Results	\$ 2.40	\$ 7.50	16 x .15
Other Abstracts/Reports			
Signed Abstract	\$ 0.15		1 x .15
Post Election Report to SOS	\$ 0.90	\$ 7.50	6 x .15
	\$	\$ 3,837.00	Total hours above x 2 for Election Security Protocol of 2 staff
Misc	\$	\$ 270.00	Clerical/Attorney search fees/prep files
Total	\$ 430.70	\$ 4,107.00	\$ 4,537.70 Grand Total